

United States District Court
Central District of California

JAMES KING,

Plaintiff,

v.

SOEXO, INC.; SODEXO OPERATIONS
LLC; and DOES 1-100, inclusive,

Defendants.

Case № 2:16-cv-03076-ODW- RAO

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT
AND DENYING PLAINTIFF'S
MOTION FOR REMAND [13]**

I. INTRODUCTION

Plaintiff James King originally filed this action in state court against Defendants Sodexo, Inc. and Sodexo Operations LLC (collectively, “Sodexo”). (Complaint “Compl.”, ECF No. 1-3.) Sodexo timely removed the case to this Court based on diversity jurisdiction. (Notice of Removal (“NOR”) 2–7, ECF No. 1.) One month later, Plaintiff moved for leave to file a First Amended Complaint to add two diversity-destroying defendants, co-workers Ryan Moosman and Kevin Akrey. (Mot. 1, ECF No. 13.) Plaintiff also seeks to remand the action back to state court. (*Id.*) The Court finds that there is bad faith, dilatory motive, and undue delay on the part of Plaintiff in seeking leave to amend. The Court also finds that there is subject-matter jurisdiction over this action, pursuant to 28 U.S.C. § 1332. Therefore, Plaintiff’s

1 Motion for Leave to Amend and Remand is **DENIED**.¹

2 **II. FACTUAL BACKGROUND**

3 Plaintiff James King filed the Complaint on February 16, 2016 in the Los
4 Angeles County Superior Court. (Compl., ECF No. 1-3.) This action stems from
5 Sodexo's alleged unlawful termination of Plaintiff as a senior area resource manager
6 in Agoura Hills, California. (Compl. ¶ 6.) In the operative Complaint, Plaintiff raises
7 state law claims against Sodexo for retaliation, discrimination on the basis of his race
8 and disability, hostile work environment, wrongful termination, harassment, and
9 defamation. (Compl. ¶¶ 17–87.) King contends that he was unlawfully terminated
10 from Sodexo while on medical leave due to an unsubstantiated complaint made
11 against him. (Compl. ¶ 12.) Sodexo, a Delaware corporation with a principal place of
12 business in Maryland, answered the Complaint in state court on May 4, 2016, and
13 later removed the case to federal court on the basis of diversity jurisdiction under 28
14 U.S.C. § 1332. (ECF No. 1.)

15 Plaintiff filed the instant Motion on June 09, 2016. (ECF No. 13.) Plaintiff
16 seeks leave to add new diversity-destroying defendants, co-workers Moosman and
17 Akery (“Individual Defendants”), to his claims for harassment and defamation. (Mot.
18 9.) As such, Plaintiff also seeks to remand the action based on lack of diversity. (*Id.*)
19 Sodexo filed its Opposition to the Motion on June 20, 2016. (ECF No. 16.) Plaintiff
20 filed its Reply on June 27, 2016. (ECF No. 17.)

21 **III. LEGAL STANDARD**

22 Federal courts are courts of limited jurisdiction, having subject-matter
23 jurisdiction only over matters authorized by the Constitution and Congress. U.S.
24 Const. art. III, § 2, cl. 1; e.g., *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.
25 375, 377 (1994). A suit filed in state court may be removed to federal court if the
26

27 ¹ After carefully considering the papers filed in support of and in opposition to the Motion, the
28 Court deems the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D.
Cal. L.R. 7-15.

1 federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a).
 2 But courts strictly construe the removal statute against removal jurisdiction, and
 3 “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal
 4 in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The
 5 party seeking removal bears the burden of establishing federal jurisdiction. *Durham v.*
 6 *Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*, 980 F.2d at
 7 566).

8 Federal courts have original jurisdiction where an action presents a federal
 9 question under 28 U.S.C. § 1331, or diversity of citizenship under 28 U.S.C. § 1332.
 10 A defendant may remove a case from a state court to a federal court pursuant to the
 11 federal removal statute, 28 U.S.C. § 1441, on the basis of federal question or diversity
 12 jurisdiction. To exercise diversity jurisdiction, a federal court must find complete
 13 diversity of citizenship among the adverse parties, and the amount in controversy must
 14 exceed \$75,000, usually exclusive of interest and costs. 28 U.S.C. § 1332(a).

15 Generally, “[a] party may amend its pleading once as a matter of course within
 16 . . . 21 days after service of a responsive pleading.” Fed. R. Civ. P. 15(a)(2).
 17 However, if a plaintiff joins additional defendants after removal “whose joinder would
 18 destroy subject matter jurisdiction, the court may deny joinder.” 28 U.S.C. § 1447(e).
 19 Thus, despite a plaintiff’s right to amend under Rule 15(a), numerous courts have held
 20 it appropriate for the court “to scrutinize the propriety of a diversity-destroying
 21 amendment pursuant to Rule 15(a).” *McGrath v. Home Depot USA, Inc.*, 298 F.R.D.
 22 601, 607 (S.D. Cal. 2014).

23 IV. DISCUSSION

24 Sodexo argues that Plaintiff seeks to add the Individual Defendants to the
 25 complaint after removal for the sole purpose of destroying complete diversity, and that
 26 the Court should deny his Motion to file a First Amended Complaint under 28 U.S.C.
 27 § 1447(e). (Opp’n to Pla.’s Mot. 1, ECF No. 16.) The Court agrees. Plaintiff’s
 28 Motion is not based on the discovery of new facts; the identity of the Individual

1 Defendants and the facts surrounding their potential liability were previously alleged
 2 in the original Complaint. (Compl. ¶¶ 7–16.) In addition, because Sodexo has
 3 demonstrated that all of the parties in the operative Complaint are diverse and the
 4 amount in controversy exceeds \$75,000, Plaintiff’s Motion to Remand must also be
 5 denied.

6 *I. Motion for Leave to Amend*

7 In determining whether to allow a diversity-destroying amendment under Rule
 8 15(a), courts have considered the following factors: “(1) whether the party sought to
 9 be joined [i]s needed for just adjudication and would be joined under Federal Rule of
 10 Civil Procedure 19(a); (2) whether the statute of limitations would preclude an
 11 original action against the new defendants in state court; (3) whether there has been
 12 unexplained delay in requesting joinder; (4) whether joinder is intended solely to
 13 defeat federal jurisdiction; (5) whether the claims against the new defendant appear
 14 valid; and (6) whether denial of joinder will prejudice the plaintiff.” *McGrath*, 298
 15 F.R.D. at 607 (citing *IBC Aviation Servs., Inc. v. Compania Mexicana de Aviacion*,
 16 *S.A. de C.V.*, 125 F. Supp. 2d 1008, 1011 (N.D. Cal. 2000) (internal quotation marks
 17 omitted). Here, the factors weigh in favor of denying joinder.

18 *A. Rule 19(a)*

19 Rule 19(a) requires the joinder of parties whose absence would preclude
 20 the grant of complete relief, or whose absence would impede their ability to protect
 21 their interests or would subject any of the parties to the danger of inconsistent
 22 obligations. However, the standard for granting an amendment under § 1447(e),
 23 is a “less restrictive standard” than for joinder under Rule 19. *Boon v. Allstate Ins.*
 24 *Co.*, 229 F. Supp. 2d 1016, 1018 (C.D. Cal. 2002) (citing *IBC Aviation Services*, 125
 25 F. Supp. 2d at 1011–12). The standard is not met when a defendant’s absence “would
 26 not prevent complete relief.” *Id.* (citing *IBC Aviation Services*, 125 F. Supp. 2d at
 27 1012).

28 As this Court has previously concluded, individual employees of an employer

1 defendant are not necessary under Rule 19(a) because “liability for [the Individual
 2 Defendants’] actions as an employee are imputed to his employer under the doctrine
 3 of *respondeat superior*.” *Calderon v. Lowe’s Home Centers, LLC*, No. 2:15-CV-
 4 01140-ODW, 2015 WL 3889289, at *4 (C.D. Cal. June 24, 2015). Moreover, this
 5 Court similarly concluded that “the only time an employee is going to be sued is when
 6 it serves a tactical legal purpose, like defeating diversity.” *Id.* (citing *Linnin v.*
 7 *Michielsens*, 372, F. Supp. 2d 811, 823–24 (E.D. Va. 2005).

8 Plaintiff named Sodexo, his former employer, in all causes of action and can
 9 obtain complete relief therefrom. (*See* Compl. ¶¶ 17–87; First Am. Compl. ¶¶ 24–95.)
 10 Plaintiff has made no showing that denying the addition of the new defendants in this
 11 case—both of whom are current Sodexo employees—would prevent him from
 12 receiving just adjudication of his claim in federal court. In fact, Plaintiff’s
 13 allegations against the Individual Defendants simply duplicate the allegations Plaintiff
 14 asserts against Sodexo. (*Id.*) Indeed, Rule 19 refers only to relief as between the
 15 persons already parties and not relief between a party and the absent party whose
 16 joinder is sought. *See* Fed. R. Civ. P. 19(a)(1).

17 B. Statute of Limitations

18 There does not appear to be a statute of limitations issue.

19 C. Dilatory Motive/Delay

20 Courts routinely exercise their discretion to deny joinder when it appears that
 21 the plaintiff’s sole motivation for joining a defendant is to defeat diversity jurisdiction
 22 and avoid resolution of the case in federal court. *See Desert Empire Bank v. Ins. Co.*
 23 *of N. Am.*, 623 F.2d 1371, 1376 (9th Cir. 1980) (concluding that a trial court “should
 24 look with particular care at such motive in removal cases, when the presence of a new
 25 defendant will defeat the court’s diversity jurisdiction and require a remand to the
 26 state court”). In evaluating dilatory motive and undue delay, courts ask “whether the
 27 moving party knew or should have known the facts and theories raised by the
 28 amendment in the original pleading.” *Jackson v. Bank of Hawaii*, 902 F.2d 1385,

1 1388 (9th Cir. 1990); *see also Chodus v. West Publ'g Co.*, 292 F.3d 992, 1003 (9th
2 Cir. 2002) (stating that the District Court did not abuse its discretion in denying a
3 Motion to Amend on undue delay where the facts were available to the plaintiff before
4 previous amendments to the complaint).

5 Plaintiff's amendment appears calculated to deprive the Court of subject matter
6 jurisdiction by adding non-diverse defendants to the action, as evidenced by Plaintiff's
7 longstanding knowledge of the facts giving rise to the proposed amendments. (*See*
8 Compl. ¶¶ 17–87; First Am. Compl. ¶¶ 24–95.) Plaintiff was aware of the potential
9 claims he had against Moosman and Akrey before this case was removed to federal
10 court and before the action was even filed, as he named both individuals in the
11 operative complaint and the circumstances giving rise to their alleged liability.
12 (Compl. ¶¶ 7–16.)

13 Most importantly, Plaintiff's Motion provides no reasonable justification for
14 why he unreasonably delayed in naming Moosman and Akrey when he knew of their
15 existence and involvement since the inception of the litigation. *See Maldonado v.*
16 *City of Oakland*, C 01 1970 MEJ, 2002 WL 826801, at *6 (N.D. Cal. Apr. 29, 2002)
17 (The court denied the plaintiff's Motion for Leave to Amend to add three individual
18 defendants, observing that plaintiff knew of the identities of the proposed defendants
19 at least eight months prior to the inception of the cause of action, the motion to amend
20 was filed over one year after filing of the complaint, and the plaintiff could not
21 "adequately explain the undue delay in finally naming them now.") Unlike cases
22 where the plaintiff named *doe* defendants whose identity was unknown, Plaintiff has
23 been aware of the potential claims against Akrey and Moosman since his termination
24 in August, 2015. (Compl. ¶¶ 7–16.) The fact that Plaintiff requested to join diversity-
25 destroying defendants to the complaint immediately after removal and without any
26 substantial change in circumstances suggests an ulterior motive for their joinder. The
27 Court can only conclude that Plaintiff wishes to add the Individual Defendants in this
28 lawsuit for the strategic reason of destroying complete diversity.

1 D. Validity of Claims

2 Courts consider whether the claim to be added seems meritorious. *Clinco*, 41 F.
 3 Supp. 2d at 1083. The Ninth circuit has stated “[i]f the plaintiff fails to state a cause
 4 of action against a resident defendant, and the failure is obvious according to the
 5 settled rules of the state, the joinder of the resident defendant is fraudulent.” *McCabe*
 6 *v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (holding that a company
 7 manger acting on behalf of his employer was wrongfully joined in a wrongful
 8 termination action in an attempt to defeat diversity jurisdiction).

9 Plaintiff’s proposed causes of action for harassment and defamation against the
 10 Individual Defendants are weak at best. Plaintiff alleges harassment only against
 11 Moosman, claiming that he made derogatory statements regarding Plaintiff that led to
 12 his termination. (Mot. 3.) To support this claim, Plaintiff points to incidents where
 13 Moosman excluded Plaintiff from phone calls, did not assign him to be a team leader,
 14 spoke to him in a demeaning manner, and verbally reprimanded him for conduct that
 15 allegedly violated company policy. (FAC ¶¶ 11, 14, 20, ECF No 15.) Plaintiff also
 16 claims that Moosman allegedly referred to Plaintiff’s “kind,” and said “his people are
 17 meant to follow not lead.” (FAC ¶ 11.) Plaintiff construed this comment to refer to
 18 his race and was allegedly made on one occasion.

19 Similarly, Plaintiff alleges defamation only against Akrey, claiming that he
 20 corroborated the false statements a janitor made against him during a sexual
 21 harassment investigation. (FAC ¶ 22.)

22 Plaintiff’s allegations against the Individual Defendants are brief and allege no
 23 basis for recovery against the individuals separate and apart from the relief sought
 24 against Sodexo, the employer of the Individual Defendants. In particular, the FAC
 25 contains no allegations of actions by the Individual Defendants outside the scope of
 26 their employment. Absent any specific facts that the Individual Defendant’s conduct
 27 was for their own benefit or personal advantage, they cannot be held personally liable
 28 for Plaintiff’s alleged injuries. *See McGrath v. Home Depot USA, Inc.*, 298 F.R.D.

1 601, 608 (S.D. Cal. 2014). Further, as discussed *supra*, the Individual Defendant's
 2 actions are imputed to their employer, Sodexo, under *respondeat superior*. Because
 3 Plaintiff cannot assert claims against Moosman and Akrey as individuals, this factor
 4 demonstrates that they are sham defendants.

5 E. Prejudice to Plaintiff

6 Plaintiff will suffer little to no prejudice if Moosman and Akrey are not joined
 7 as defendants. As previously noted, Plaintiff's claims against them are weak, and
 8 their presence in this lawsuit is unnecessary for Plaintiff to obtain the relief he has
 9 requested. Although Plaintiff seeks punitive damages against Moosman and Akrey
 10 for which Sodexo is not necessarily liable, *Cruz v. HomeBase*, 83 Cal. App. 4th 160,
 11 167 (2000), Plaintiff does not plead any specific facts showing that either acted with
 12 malice. The foregoing factors clearly favor denying joinder.

13 II. Motion to Remand

14 Removal is and was proper based on diversity jurisdiction, pursuant to 28
 15 U.S.C. § 1441. This action is between citizens of different states and the amount in
 16 controversy exceeds \$75,000. (Opp'n to Pla.'s Mot. 14; NOR ¶ 24.) Accordingly, the
 17 Court **DENIES** Plaintiff's Motion to Remand. (ECF No. 13.)

18 A. Plaintiff is a Citizen of California

19 In Plaintiff's Motion, he claims that Sodexo has failed to establish that Plaintiff
 20 is a citizen and/or domicile of California. (Mot. 11–12.) In their Notice of Removal,
 21 Sodexo states, "Plaintiff alleges that he was, at the time of filing of the Complaint, and
 22 still is a resident of Los Angeles County in the state of California." (NOR ¶ 7.)
 23 Plaintiff however contends that this is insufficient to establish that he is a citizen of
 24 California, that he is domiciled in California, or that he intends to remain in
 25 California. (Mot. 11–12.)

26 For diversity jurisdiction purposes, a natural person is a citizen of a state if he
 27 or she is a citizen of the United States and the state is her state of domicile. *Kanter v.*
 28 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). "A person's domicile is her

1 permanent home, where she resides with the intention to remain or to which she
 2 intends to return.” *Id.* The intention to remain may be established by factors such as:
 3 current residence; voting registration and practices; location of personal and real
 4 property; location of brokerage and bank accounts; location of spouse and family;
 5 membership in unions and other organizations; place of employment or business;
 6 driver’s license and automobile registration; and payment of taxes. *Kyung Park v.*
 7 *Holder*, 572 F.3d 619, 624–25 (9th Cir. 2009). So long as a plaintiff has not
 8 completed a move to another state, the plaintiff’s domicile remains at the place of his
 9 or her last residence at the time a suit was filed. *Heinz v. Havelock*, 757 F. Supp.
 10 1076, 1079 (C.D. Cal. 1991).

11 Plaintiff is, and was, domiciled in California because he did and does reside in
 12 California, and a preponderance of the evidence demonstrates that he intends and
 13 intended to remain in California. Plaintiff set forth in his Complaint that he resided in
 14 California and worked in Agoura Hills, California, and “at all times relevant” was a
 15 resident of the County of Los Angeles. (Compl. ¶ 1.) During the application process
 16 and throughout his employment with Sodexo, Plaintiff provided Sodexo with
 17 documents indicating that he resided in Los Angeles, California since the beginning of
 18 his employment, and it remains as his last known address. (Declaration of Donna
 19 White (“White Decl.”) ¶ 8, ECF No. 7.) Further, Plaintiff’s residence and domicile in
 20 California are demonstrated by his continuous employment and residence in Los
 21 Angeles, California since at least 2003. (Supp. White Decl. ¶¶ 4–6, ECF No. 16-3,
 22 Ex. A and Ex. B.) (referring to Plaintiff’s resume, offer of employment, and his
 23 residential address on file with Defendant throughout his employment). (*Id.* ¶ 6.)
 24 Lastly, Plaintiff’s paystubs, wage statements, and his Federal tax form W2 issued at
 25 the conclusion of 2015 were all directed to his home address in Los Angeles
 26 California. Taken together, Sodexo has shown that Plaintiff is a citizen of California.
 27 *See, e.g., State Farm Mutual Auto Ins. Co.*, 19 F.3d at 520 (10th Cir.1994) (residence
 28 in last known domicile establishes citizenship in that state absent evidence of

1 citizenship in another state).

2 B. Sodexo is a Citizen of Delaware and Maryland

3 A corporation is deemed to be a citizen of every state and foreign state by
4 which it has been incorporated and of the state or foreign state where it has its
5 principal place of business. 28 U.S.C. § 1332(c)(1). Sodexo is a Delaware corporation
6 with its principal place of business in Maryland. (NOR ¶¶ 9, 10.)

7 C. Amount in Controversy

8 The parties do not dispute that the amount in controversy exceeds \$75,000.

9 **V. CONCLUSION**

10 The foregoing factors clearly favor denying joinder, and Plaintiff's Motion for
11 Leave to File a First Amended Complaint is hereby **DENIED**. (ECF No. 13.) In
12 addition, because the Court finds that there is subject-matter jurisdiction over this
13 action, pursuant to 28 U.S.C. § 1332, the Court **DENIES** Plaintiff's Motion to
14 Remand. (*Id.*)

15
16 **IT IS SO ORDERED.**

17
18 August 5, 2016

19
20 

21 **OTIS D. WRIGHT, II**
22 **UNITED STATES DISTRICT JUDGE**
23
24
25
26
27
28